

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

**FORMAL REQUIREMENTS AND PROCEDURES IN
HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. §2254**

1. Proceedings for habeas corpus relief under 28 U.S.C. §2254 shall be in accordance with the Rules promulgated with respect to such proceedings by the Supreme Court and modified by the Congress by P.L. 94-426 and P.L. 94-577, effective February 1, 1977, as amended, and with the applicable provisions of the Antiterrorism and Effective Death Penalty Act of 1996, P.L. 104-132.
2. All petitions in habeas corpus proceedings must be in substantially the form prescribed by the court (and must comply with the instructions included therein), copies of which shall be made available by the Clerk upon request.
3. THERE ARE LIMITATIONS ON YOUR ABILITY TO FILE A HABEAS CORPUS PETITION, AND THERE MAY BE DECISIONS YOU MUST MAKE:
 - a. All available state court remedies must be exhausted before filing a federal habeas corpus petition. (How-ever, if a prisoner files such a petition before all available state remedies are exhausted, a federal court still has the authority to dismiss it on its merits).
 - b. All federal constitutional claims challenging a specific conviction or sentence must be made in one habeas corpus petition.
 - c. Typically, only one federal habeas corpus petition may be filed. A second or subsequent petition can only be filed upon the authorization of the Court of Appeals.
 - d. A habeas corpus petition must be filed within one year of the date the judgment under attack became final.

THEREFORE, because generally only one habeas corpus petition may be filed, a petitioner must:

- a. consider whether all state remedies have been exhausted;
- b. consider whether all federal constitutional claims are included in the petition; and

- c. be conscious of the risk that if a petition is filed and is dismissed on its merits, no other petition can be filed challenging that conviction without the permission of the Court of Appeals.
- 4. The original petition in habeas corpus proceedings shall be filed with the Clerk. Four copies shall also be filed with the clerk for the following parties: 1) head of the institution where the prisoner is confined; 2) District Attorney of the County of Pennsylvania in which sentence was imposed or in which the petitioner is being held; 3) Attorney General of the Commonwealth of Pennsylvania; 4) any other person named as a party respondent in said proceeding.
- 5. The District Attorney, or an assistant, of the County where the petitioner was sentenced or is being held shall represent and appear for respondent in cases challenging state court convictions, sentences or other orders. The Attorney General of Pennsylvania generally will represent and appear for the Board of Probation and Parole when it is the proper respondent.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PETITION FOR WRIT OF HABEAS CORPUS
(28 U.S.C. §2254 - PERSONS IN STATE CUSTODY)

_____, PETITIONER
(Full name) (Include name under which you were convicted)

vs.

CASE NO. _____
(Supplied by the Court)

_____, RESPONDENT
(Name of Warden, Superintendent, Jailor, or authorized
person having custody of petitioner)

and

THE DISTRICT ATTORNEY OF THE COUNTY OF _____

and

THE ATTORNEY GENERAL OF THE STATE OF _____
ADDITIONAL RESPONDENT

Name

Prison Number

Place of Confinement

(If petitioner is attacking a state court judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment. DO NOT USE THIS FORM FOR §2255 PURPOSES.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

INSTRUCTIONS - READ CAREFULLY

(1) This petition must be legibly handwritten or typewritten and signed by the petitioner. Any false statement of a material fact in this petition or in a motion for leave to proceed in forma pauperis may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form. It is important that the docket number of the case under review is correctly stated. Where more room is needed to answer any question, use reverse side of form.

(2) Additional pages are not permitted. No citation of authorities need be furnished.

(3) Upon receipt of a fee of \$5.00 your petition will be filed if it is in proper order.

(4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the accompanying Motion and Declaration, setting forth information establishing your inability to prepay the fee and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.

(6) You can file only one habeas corpus petition in federal court challenging a specific conviction or sentence. You must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.

(7) Similarly, you should be careful to state specifically, in question 13, all the facts that support all the grounds for relief that you are claiming. Because of the one-year statute of limitations you may not have the chance to amend your petition to plead new or additional facts. And even if the court grants you permission to amend to plead additional facts, you may not be allowed to make any amendments that introduce a new ground or a new claim or a new theory into the case. So you must state all your grounds for relief and all the facts that support them in this petition.

(8) The law requires that as to all issues which you seek to raise in the federal district court you must first have exhausted all available state court remedies. This means that if you are a

Pennsylvania prisoner, it is likely that every issue which you seek to raise in this court, must have been unsuccessfully presented to the Superior Court of Pennsylvania, and to the Supreme Court of Pennsylvania in a petition for allowance of appeal, or else have been presented directly to the Pennsylvania Supreme Court.

(9) There is a one-year statute of limitations for filing petitions pursuant to 28 U.S.C. §2254. This means that except for time your case has been under review in the courts, you have only one year from the date on which your conviction becomes final to file a habeas corpus petition.

(10) Federal courts must dismiss claims in a second or successive petition that were presented in a prior petition that was considered on its merits.

(11) Federal courts must dismiss claims in a second or successive petition that were not presented in a prior petition unless:

(a) the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(b) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence, and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the petitioner guilty.

Before such a second or successive petition may be filed in the district court, however, the petitioner must move the court of appeals for an Order authorizing the district court to consider the petition. Petitioner's motion for such an Order must be determined by a three judge panel of the court of appeals, which must grant or deny the motion within 30 days. The court of appeals may grant the motion only if it determines that the petition makes prima facie showing that it satisfies either (a) or (b) above.

This means that -- because you will generally be allowed only one petition -- you must consider whether you want to file now, or wait until all available state court remedies have been exhausted as to all the federal constitutional claims you want to assert, so that they may all be presented.

(12) Ineffectiveness of counsel during post-trial proceedings in state court shall not be grounds for relief under 28 U.S.C. §2254.

(13) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

(14) When the petition is fully completed, the original and four copies must be mailed to:

Clerk
U.S. District Court
P. O. Box 1805
Pittsburgh, PA 15230

PETITION

1. Name and location of court which entered the judgment under attack: _____

2. Criminal Docket Number: _____
3. Date of imposition of sentence: _____
4. Length of sentence: _____
5. Nature of offense or offenses for which you were convicted: _____

6. What was your plea? (Check one) Not Guilty () Guilty ()
Nolo Contendere ()
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____

7. If you were found guilty after a plea of not guilty, check whether finding was made by: Jury () Judge only ()
8. Did you testify at the trial? Yes () No ()
9. Did you appeal from the judgment of conviction? Yes () No ()
10. If you did appeal, answer the following:
 - (a) First Appeal
 - (1) Name of Court: _____
 - (2) Docket Number: _____
 - (3) Result: _____
 - (4) Citation (If known): _____
 - (b) Second Appeal
 - (1) Name of Court: _____

- (2) Docket Number: _____
(3) Result: _____
(4) Citation (If known): _____
(c) If you filed a petition for certiorari in the United States Supreme Court, give details: _____

11. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal, including petitions under the Post Conviction Hearing Act? Yes () No ()

12. If your answer is "Yes" to 11, give the following information:

- (1) Name of court: _____
(2) Nature of proceeding: _____
(3) Grounds raised: _____

- (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No ()
(5) Result: _____ Date: _____

(b) As to any second petition, application or motion give the same information:

- (1) Name of Court: _____
(2) Nature of Proceeding: _____
(3) Grounds raised: _____

- (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No ()
(5) Result: _____ Date: _____

(c) As to any third petition, application or motion give the same information:

(1) Name of Court: _____

(2) Nature of Proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No ()

(5) Result: _____ Date: _____

(d) Did you appeal to the highest state court having jurisdiction the result of any action on any petition, application or motion:

(1) First petition, etc.: Yes () No ()

(2) Second petition, etc.: Yes () No ()

(3) Third petition, etc.: Yes () No ()

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not? _____

13. State concisely every ground on which you claim that you are being held unlawfully. State specifically the facts support-ing each ground. You should raise in this petition all available grounds (relating to this conviction) on which you are being held in custody unlawfully, and you should state all the facts sufficient to support each ground. DO SO NOW; because of recent changes in the law you may not be given an opportunity to amend your petition later (See instructions, number 7.).

Grounds: _____

14. If any of the grounds listed were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not present-ing them:

15. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes () No ()

16. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any adverse ruling in a post-conviction proceeding: _____

17. Were you sentenced on more than one count of any indictment, or more than one indictment, in the same court and at the same time:

Yes () No ()

18. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes () No ()

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) And give date and length of sentence to be served in the
future: _____

(c) Have you filed, or do you contemplate filing, any petition
attacking the judgment which imposed the sentence to be
served in the future? Yes () No ()

Wherefore, petition prays that the court grant petitioner relief
to which he may be entitled in this proceeding.

Executed at: _____
(City, County, State)

I, _____ declare under penalty of perjury that
the foregoing is true and correct.

Executed on: _____
(Date)

(Signature of Petitioner)

(NOTE: No Notary Certification Required)